Technology Service Solutions *and* International Brotherhood of Electrical Workers, AFL–CIO, Local 111. Cases 27–CA–13971 and 27–CA–13971–3

May 24, 2001

ORDER GRANTING MOTIONS

BY CHAIRMAN HURTGEN AND MEMBERS TRUESDALE AND WALSH

On October 31, 2000, the National Labor Relations Board issued a Supplemental Decision and Order in this proceeding,[1] finding, inter alia, that the Respondent violated Section 8(a)(1) of the Act when its Supervisor Rod Leonard "'cautioned' employee Dennis Phillips against sending messages to other employees regarding unionization."[2] To remedy this violation, the Board ordered the Respondent to cease and desist from "[t]elling employees who send prounion messages to other employees that they should stop sending messages and that they should be sure that the intended recipient wants to receive their message before they send it" and, further, to cease and desist from "[i]n any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act." The Board additionally ordered the Respondent to post a notice at its Englewood, Colorado facility informing employees that it would cease and desist from engaging in these activities.

Thereafter, the Charging Party Union and the General Counsel filed Motions for Reconsideration, and the Respondent filed a Memorandum in Opposition to the motions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

In its motion, the Union contends that the Board's Order requiring the Respondent to post the notice to employees at its Englewood, Colorado facility will not effectuate the Board's objective of informing affected employees about the outcome of this proceeding and the nature of their rights under the Act, because none of the employees at issue—the customer service representatives (CSRs) employed in the Respondent's south-central region—report to the Respondent's Englewood facility. To assure that the CSRs will be likely to receive actual notice of the Board's decision in this case, the Union moves that the Board reconsider its Order and require the Respondent either to post the prescribed notice at each of its parts locations in the south-central region or mail a copy of the notice to each of the south-central region CSRs.

In his motion, the General Counsel similarly argues that few if any CSRs will see the notice if it is posted only at the Respondent's Englewood facility. Noting that contact between CSRs and the Respondent's management is generally accomplished through use of personal terminals, referred to as "PTs" or "bricks," the General Counsel contends that the Board should reconsider its Order and require the Respondent to disseminate the notice to all south-central region CSRs by transmitting it via their bricks and by mailing it to them.

In its opposition to the motions, the Respondent contends that the Union and the General Counsel waived the right to request the remedies they now seek because they failed to request such remedies from the administrative law judge or in their exceptions to the Board. The Respondent further contends that the motions also fail on the merits, as the remedies that they request are disproportionate to the violation found. Finally, the Respondent urges that, if the Board decides that an expansion of the posting requirement is warranted, it should require posting at the Respondent's existing parts locations identified in the hearing record.

Having reconsidered the Board's Supplemental Decision and Order in light of the motions and the Respondent's Memorandum in Opposition, we find that the motions are meritorious and should be granted to the extent indicated below. In its Supplemental Decision and Order, the Board found as follows:

> In its south-central region, covering Colorado, New Mexico, Oklahoma, Kansas, Missouri, Arkansas, and parts of Nebraska and Wyoming, the Respondent employs 236 CSRs. The Respondent's headquarters for the region is located in Englewood, Colorado, a Denver suburb. CSRs are geographically dispersed and do not report to work at any one location. Rather, they typically work out of their homes or vehicles and spend most of their time at customers' locations.[3]

As the above-quoted finding and additional evidence in the record show, the Respondent's south-central region CSRs seldom, if ever, visit the Respondent's Englewood facility. Thus, it is clear that posting of the notice solely at the Englewood facility will inform few, if any, of the south-central region CSRs about the Board's Order in this case. Accordingly, we find it necessary to modify the posting requirement set forth in the Supplemental Decision and Order to ensure that the CSRs are likely to be informed about our finding of an unfair labor practice in this case and

[1] 332 NLRB No. 100 (2000).

[2] Id., slip op. at 1. The Board also dismissed a complaint allegation that the Respondent violated Sec. 8(a)(1) by refusing to provide the Union with a list of names and addresses of employees in a unit that the Union was attempting to organize.

[3] 332 NLRB No. 100, slip op. at 2.

the action that the Respondent is required to take to remedy the violation.

The Board has "'broad discretionary' authority under Section 10(c) to fashion appropriate remedies that will best effectuate the policies of the Act."[4] In exercising that authority, the Board crafts its posting requirements to ensure that a respondent employer actually apprises its employees of the Board's decision and their rights under the Act. For example, in *Indian Hills Care Center*,[5] the Board modified its standard posting requirement to make clear that, whenever a respondent's facility closes during the pendency of the Board's proceedings, the respondent must mail the notice to its former employees to ensure that they are notified of the outcome, as posting the notice at the closed facility will not serve to notify the employees of its contents. The Board also tailors its posting requirement to adapt to varying circumstances on a case-by-case basis. Thus, for example, in *Garment Workers*,[6] the Board ordered the notice be mailed to the employees' homes as well as posted at the respondent's headquarters, because the employees were assigned to various field locations and might not visit headquarters during the posting period. Similarly, in *Best Roofing Co*.,[7] the Board found that, in view of the nature of employment in the construction industry and because the respondent operated its business out of a private home, requiring posting solely at the respondent's place of business would be inadequate to inform its employees of their rights under the decision. Therefore, the Board ordered the respondent to post the notices at its jobsites as well as at its place of business and to furnish signed copies of the notice to the union for posting at the union's office and meeting places.[8]

The present case requires modification of the posting requirements as well. The posting of the notice at the Respondent's Englewood facility would be inadequate to inform employees about our finding of an unfair labor practice and the action that the Respondent is required to take to remedy the violation. We therefore find that it would best effectuate the policies of the Act also to require the Respondent to mail the notice to all CSRs in the south-central region and to post the notice at all its parts locations in the south-central region. Requiring posting at the parts locations alone might not be adequate to assure that all CSRs are informed about the outcome of this case, as it is not clear from the record that all CSRs visit the Respondent's parts locations. Some have supplies delivered to their homes or their customers' locations and may rely exclusively on these methods for receiving supplies. Thus, while posting at the parts locations is a useful supplementary method of notifying employees, we find it necessary to require mailing of the notices to each CSR at his or her home.[9]

We deny, however, the General Counsel's request that we require the notices be sent to employees via their personal terminals. The Respondent contends that its personal terminals would not be adequate for transmitting the notice, as messages sent via personal terminals are limited to 55 characters in length. In any event, we find that mailing of the notices to the CSRs, coupled with posting them at parts locations, will be sufficient to notify the CSRs and additional measures are not necessary.

We find the Respondent's arguments in opposition to the motions unpersuasive. The Respondent's contention that the Board should deny the motions because the Union and the General Counsel failed to seek additional methods for notice distribution at an earlier stage of the proceedings is misplaced. Remedial matters are traditionally within the Board's province and may be addressed by the Board even in the absence of exceptions.[10] Moreover, in this case the judge dismissed the complaint allegation that the Respondent violated Section 8(a)(1) by cautioning employee Phillips against sending messages to other employees regarding unionization. Accordingly, it was not until the Board issued its decision reversing the judge and finding the violation that the Union and the General Counsel were presented with the remedial Order that provided for notice posting only at the Respondent's Englewood facility. Thus, they cannot be faulted for failing to except to such an Order at an earlier stage in the proceedings.

We also find no merit in the Respondent's contention that requiring broader posting or mailing of notices in this case would be disproportionate to the violation found. Relying on cases in which the Board declined to

[4] *Indian Hills Care Center*, 321 NLRB 144 fn. 3 (1996), quoting *NLRB v. J. H. Rutter-Rex Mfg. Co*., 396 U.S. 258, 262–263 (1969).

[5] Id. at 144.

[6] 295 NLRB 411, 416 (1989).

[7] 298 NLRB 754, 758 (1990).

[8] Id.

[9] Chairman Hurtgen agrees that the notice should be posted at all "parts" locations in the south-central region. He does not agree that the notice must also be mailed to all CSRs in that Region. The only asserted basis for doing so is that "it is not clear from the record that all CSRs visit the Respondent's parts locations." However, the reason for this lack of clarity is that the General Counsel did not seek this remedy before the judge. Thus, it is not surprising that the General Counsel did not fill this evidentiary gap. In the absence of evidentiary support, Member Hurtgen would not grant the remedy.

[10] *Indian Hills Care Center*, supra at 144 fn. 4. Additionally, remedial relief is not precluded on the basis that it was not specifically pled. *Transport Workers (Johnson Controls World Services)*, 327 NLRB 23 (1998).

order notice posting at multiple facilities,[11] the Respondent contends that the Board normally requires notice posting only at the facility where the violation occurred and that, in this case, "the Board's traditional remedial rules would dictate that the notice requirement be limited to Phillips." In our view, the cases on which the Respondent relies are inapposite. Unlike the employees in those cases, Phillips and the other CSRs here do not work at fixed locations. Nor do they report to work at any one site. Thus, there is no defined facility at which the violation could be said to have occurred[12] or, more importantly, at which notice posting would suffice to inform the affected CSRs about our finding that the Respondent committed an unfair labor practice and the measures that it will take to remedy that violation.

ORDER

The Union's and the General Counsel's Motions for Reconsideration are granted to the extent indicated above and the Board's Order in its Supplemental Decision and Order is modified as follows. Accordingly, the Respondent, Technology Service Solutions, Englewood, Colorado, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

Substitute the following as paragraph 2(a).

"(a) Within 14 days after service by the Region, post at its Englewood, Colorado facility and at all its parts locations in its south-central region copies of the attached notice marked 'Appendix'[22] and duplicate and mail, at its own expense, a copy of the notice to all its customer service representatives in its south-central region. Copies of the notice, on forms provided by the Regional Director for Region 27, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 1, 1995."

[11] *Consolidated Edison of New York,* 323 NLRB 910, 910–912 (1997); *Marriott Corp*., 313 NLRB 896 (1994).

[12] The unlawful statement was made in a telephone conversation, apparently long distance, between Phillips and his supervisor, Leonard. The precise locations of Phillips and Leonard at the time of the telephone conversation are not identified in the record.